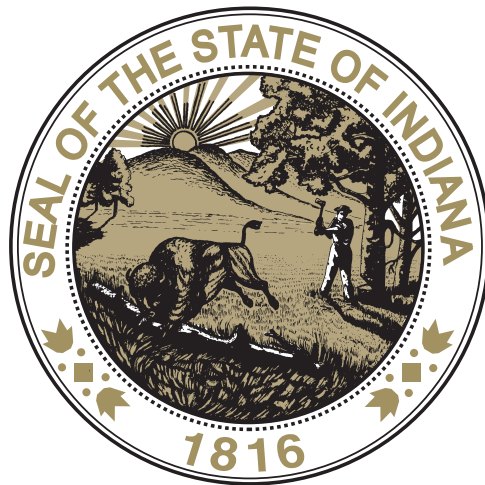

LOCAL BOARD HANDBOOK



**Indiana Alcohol and Tobacco
Commission**



Welcome from the Chairman

Thank you for accepting the responsibility of serving your community and the State of Indiana by fulfilling your duties as a member of the Local Board. The Alcohol and Tobacco Commission appreciates the vital role that local government plays in the lives of Hoosiers.

As a member of your Local Board, you will represent the Commission to members of your community. You will participate in public hearings at which applications for alcoholic beverage permits will be considered and voted upon. You will be able to listen and respond to the concerns of your community to ensure that all Hoosiers have a voice in their government.

As you consider the concerns of the local community, it is important that you follow state law. Although Local Boards should be responsive to their communities, the laws regulating alcoholic beverages must be applied and enforced uniformly throughout Indiana. If you have any questions about Indiana's alcoholic beverage laws and rules, please feel free to contact the Commission's Executive Secretary and Hearing Judge, U-Jung Choe, who will be happy to provide further assistance.

I thank you again for your service, and hope that you find this handbook helpful.

Sincerely,

Dave Heath
Chairman
Alcohol and Tobacco Commission

History of the Alcohol and Tobacco Commission

The 21st Amendment was passed by the United States Congress on February 20, 1933, and fully ratified by December 5, 1933. With the adoption of the 21st Amendment, which repealed national prohibition, the Indiana General Assembly created the Alcoholic Beverage Commission to control and regulate the sale of alcohol within the state. In 2001, the name was changed to the Alcohol and Tobacco Commission (the “Commission”). The Indiana State Excise Police is the law enforcement division of the Commission. Primary goals of the Commission are the prevention of underage drinking and tobacco use and the collection of revenue from the sale of alcohol and tobacco.

Relationship between the Commission and Local Boards

The Commission is composed of four members appointed by the Governor, one of whom serves as the Chairman. Each of the state’s 92 Counties has a Local Board, which investigates all applications for alcoholic beverage retailer and dealer permits in their respective County. Each Local Board is made up of four people – one appointed by the Board of County Commissioners, one by the chief executive of the largest City or Town in the County, one by the County Fiscal Body, and one designated representative of the Commission, who is usually an Officer of the Indiana State Excise Police.

Local Board Organization and Compensation

Each Local Board elects a President, who presides over meetings and signs the meeting minutes; a Secretary, who keeps minutes of each meeting and attests the President’s signature; and a Designated Member chosen by the Commission, who is usually an Excise Officer. The Designated Member conducts on-site inspections, takes responsibility for tape-recording hearings and transmitting the tapes, voting sheets, exhibits, and other evidence to the Commission.

Each Local Board member receives an annual salary of \$240 from the State, paid in monthly installments. Each member also receives \$3 for each application he or she investigates and reports on. Local Board members are also compensated for mileage.

Functions of the Local Board

Ultimately, the Commission is responsible for issuing or denying alcoholic beverage permits. Local Boards investigate each permit application by conducting regular meetings at which they consider applications for permits to sell alcohol, including applications for new permits, renewal of existing permits, and transfers of ownership and/or locations of a permit. These meetings are advertised and open to the public, and must be conducted in accordance with Indiana's Open Door laws. The Local Board must have a quorum of three members in attendance to conduct business.

At each meeting, the Local Board votes on each application before it, and submits its vote to the Commission. The Commission then reviews the Board's recommendation and determines whether it will follow the Local Board's recommendation. The Commission normally follows the Local Board recommendation; however, in some instances the Commission votes to remand the application to the Local Board for further proceedings or votes to overturn the Local Board if, for example, the Local Board's decision was not based on the evidence or was not in accordance with the law.

New Permit Applications and Transfers of Location

At a hearing on a new permit or a transfer of location application, the applicant has the burden to prove he qualifies to hold the desired permit at the proposed location. An applicant may be denied for any one or more of the following: (1) The applicant does not maintain a high and fine reputation in the community; (2) There is no need for the services of the applicant at the proposed location; (3) The neighborhood and/or community do not desire the services; (4) The services at the proposed location would have a negative impact on other businesses in the neighborhood as well as a negative impact on the neighborhood in

general; (5) The permit premises is within 200 feet of a church or school; or (6) The permit premises is in a residential area as referred to in IC 7.1-1-3-38 and 905 IAC 1-18-1.

Members of the community who wish to speak or offer evidence against the applicant are known as “remonstrators.” Under the Commission’s rules, remonstrator means a person who appears, personally or by counsel, at the Local Board hearing to speak against a permit and identifies himself by stating his name and address or telephone number to the Local Board. The Local Board may limit the testimony of remonstrators, particularly if the testimony is repetitive or is not relevant to the application at issue. The Local Board may utilize any and all information presented at the hearing; however, it may not consider information obtained outside the hearing process. Following the presentation of evidence by the applicant and the remonstrators, the Local Board votes on the application. If the application is denied, the Local Board notes the reasons for the denial on the Local Board voting sheet. The Local Board must follow the law when acting on an application. The Commission is more likely to reject the recommendation of a Local Board if the Board lists reasons for the grant or denial of a permit that are not legally justifiable.

Renewal of Existing Permits

A permit to sell alcoholic beverages is not unlimited in duration. Each permit must be renewed annually by submitting a renewal application to the Commission. The Local Board is required to examine each renewal application every two years. A permittee is not required to attend a Local Board hearing concerning his renewal application unless he has a pending violation with the Commission or if he has been notified to attend the hearing by the Local Board or the Commission. Therefore, the Local Board may not deny an application for renewal of a permit unless the permittee was notified and given an opportunity to be present before the Local Board. An application for renewal of a permit is handled much the same way as a new permit application; however, the Local Board must consider only three factors set forth in 905 IAC 1-27-1, 1-27-2 and 1-27-3: whether the applicant is of good moral character; whether the permit premises has become a public nuisance; and whether any criminal offenses have taken place at the permit premises.

Transfer of Ownership

When the holder of a permit desires to transfer the permit to another person, that person must come before the Local Board. Generally, an application to transfer ownership of a permit is similar to a new permit application in that the person who will own the permit must establish his or her fitness to hold the permit.

Post-Hearing Procedure

After the Local Board votes on each application, its members must fill out the Voting Sheet, on which they list their reasons for voting as they did on the application. Although Local Board members may go off the record to fill in the Voting Sheet, no dialogue should take place off the record. It is important to generate this record of the basis for the vote so that a record is preserved for appeal, if necessary. The Commission reviews each recommendation of the Local Board and votes to grant, deny, or remand the application to the Local Board for further proceedings.

The Appeal Process

Once the Commission grants or denies an application, the applicant or other interested parties have fifteen days to appeal the Commission's action. A remonstrator may appeal the Commission's grant of a permit by filing a Petition for Intervention with the Commission, in which the remonstrator must show that he or she has "standing" to appeal the Commission's decision and become an "Intervening Remonstrator." To establish standing, the remonstrator must demonstrate that a "direct injury" will result from the Commission action causing immediate or future harm to a legal interest of the remonstrator. General disagreement with a policy or injury that is common to all members of a community is not sufficient to grant standing – the remonstrator must show that he or she will suffer an injury distinct from other members of the community.

Even if the remonstrator cannot demonstrate standing so as to become an Intervening Remonstrator, anyone who remonstrated at the Local Board hearing may remonstrate at the appeal hearing, at the discretion of the Hearing Judge. Only an Intervening Remonstrator, however, has the right to appeal the Commission's decision or seek judicial review of the Commission's internal appeal proceedings.

If no Petition for Intervention is granted and no one otherwise appeals the Commission's decision, the decision stands; however, if an appeal is initiated, the Commission's Hearing Judge sets a date for an appeal hearing. The Hearing Judge often sets a pre-hearing conference to discuss any outstanding issues. Before the appeal hearing, the Hearing Judge reviews the transcript and audio tapes of the Local Board hearing. The Hearing Judge's review of the Local Board proceeding is *de novo*, meaning that the Hearing Judge is not bound by the Local Board's vote or any factual findings made by its members. At the appeal hearing, the parties and remonstrators may present exhibits, testimony, and other evidence at the discretion of the Hearing Judge. Since the Local Board proceedings are already in the record, the Hearing Judge may limit testimony at the appeal hearing if it is repetitive or duplicates testimony that is already in the record.

After the appeal hearing, the Hearing Judge issues proposed Findings of Fact and Conclusions of Law to the Commission. The Commission then votes on the proposed Findings and Conclusions, which may reverse or affirm the Local Board decision, or occasionally remand the matter to the Local Board for further proceedings.

Why Are Local Board Recommendations Reversed?

A party that seeks reversal of a Local Board action must show that the Local Board somehow acted improperly. Local Boards do not have the authority to change Indiana law or apply it differently than other counties. The Local Board itself is not part of the county government in which it is located; it is the local arm of a state agency. Some Local Boards have denied permit applications on the basis of religious opposition to alcohol, or have refused to issue any permits to grocery stores or pharmacies because of community opposition to the legality of such permits. Although Local Boards are within their powers to investigate applications for alcohol permits and to determine whether the community needs or desires the services proposed by the applicant, Local Boards do not have the power to re-write state law by refusing to grant certain classes of permits or by imposing additional requirements such as hours restrictions or physical separations that are not required by law.

Under IC 7.1-3-19-11, the Commission must follow the recommendation of the Local Board unless, upon review, it determines that to follow the recommendation would be:

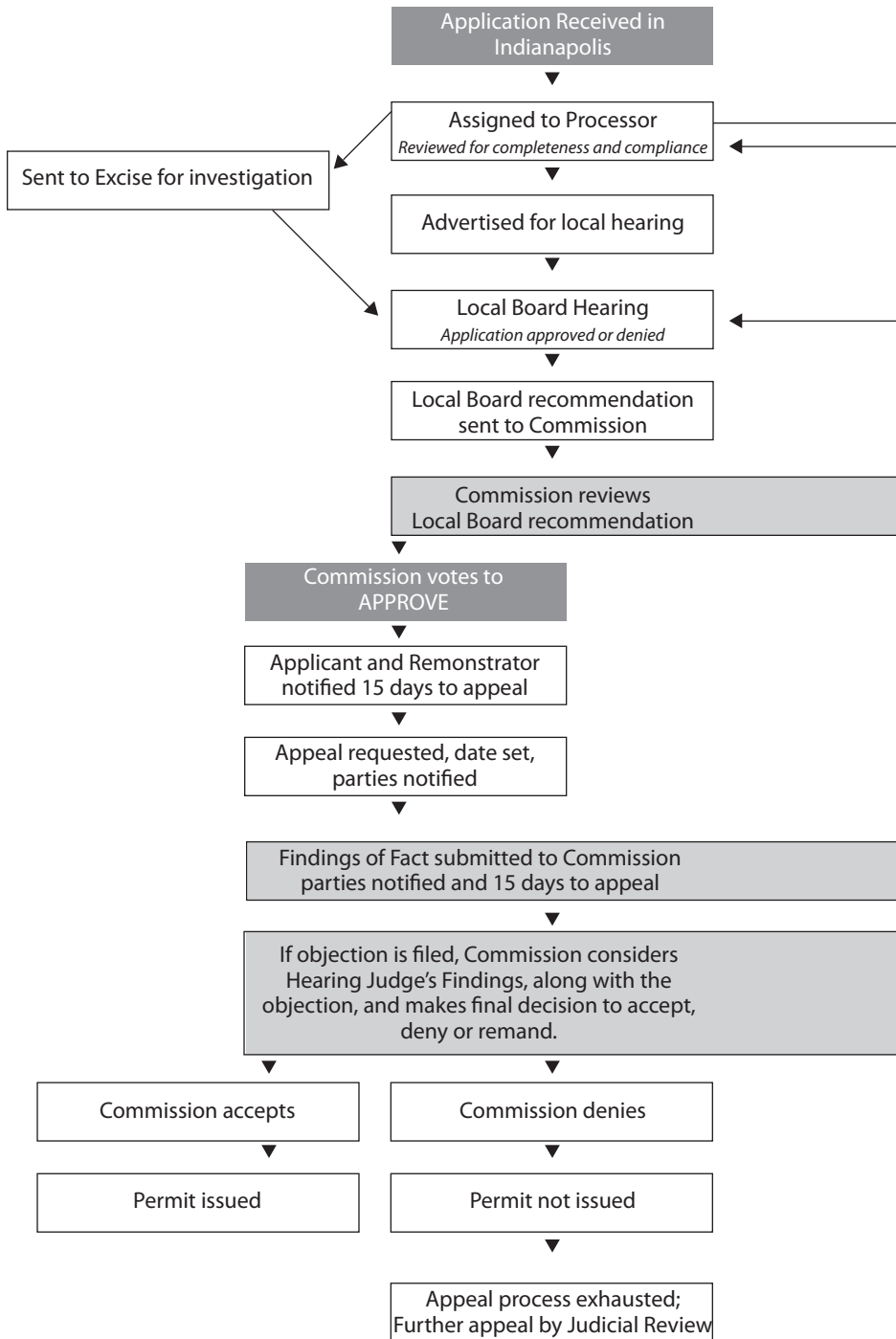
1. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;
2. Contrary to constitutional right, power, privilege or immunity;
3. In excess of, or contrary to, statutory jurisdiction, authority, limitations or rights;
4. Without observance of procedure required by law; or
5. Unsupported by substantial evidence.

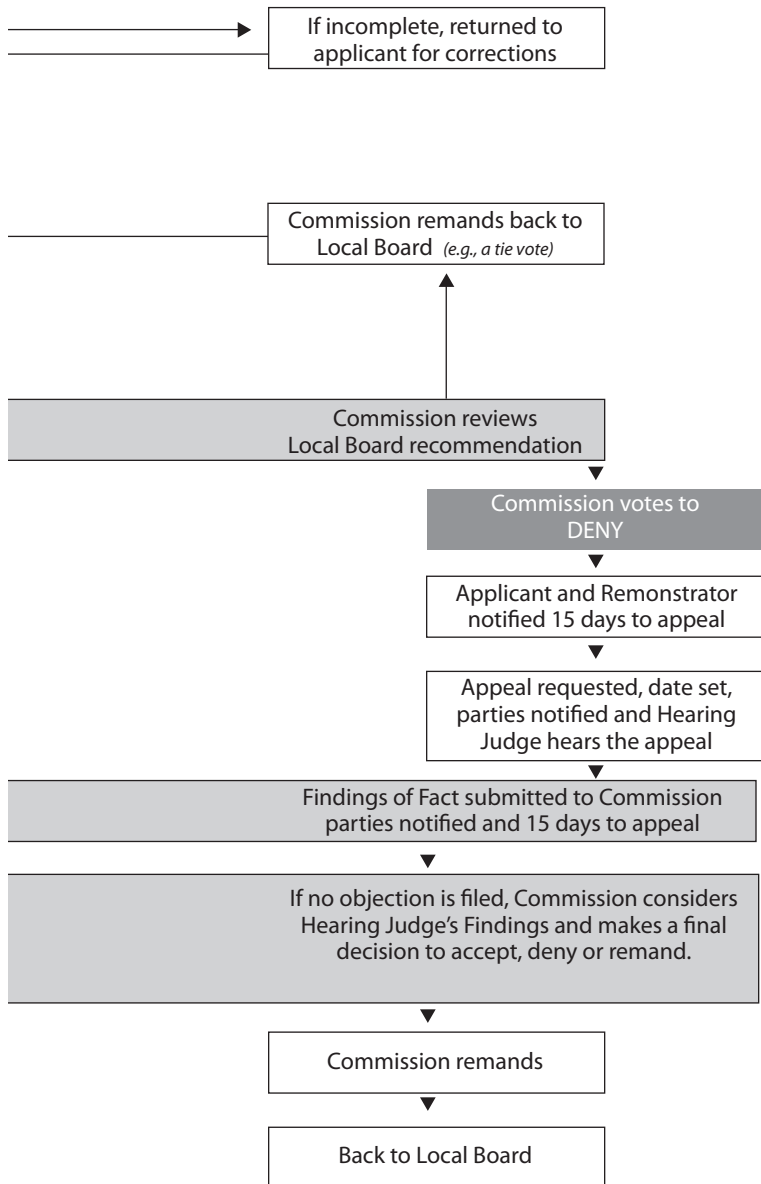
Such review shall be *de novo*.

If the Commission finds the Local Board denied a permit on a basis that is not in accordance with the law, the Commission must grant the permit. The most common reasons a Local Board recommendation is not followed or is overturned on appeal are that it was “arbitrary and capricious” or was unsupported by substantial evidence. Although Local Board proceedings are not as formal as those followed in a court of law, Local Boards must still base their recommendations on the evidence before them and the current state of Indiana law.

The Commission’s review of the Local Board’s proceeding is *de novo*, which means the Commission is not bound by the Local Board’s vote or any factual findings made by its members.

The flowchart on the following pages summarizes the appeal process:





Open Door Laws

Local Board meetings are subject to Indiana's Open Door Laws, which prohibit the Local Board from discussing or deciding any matters related to a permit application outside the Local Board meeting. Failure to abide by these laws can result in the reversal of the Local Board's decision and an award of attorneys' fees to the party who is damaged as a result of the violation. The following steps must be taken to comply with the Open Door Laws:

1. Post notice of Local Board meetings 48 hours in advance by posting a copy of the meeting agenda at the office of the agency holding the meetings. If the time, date, or location of the meeting is changed, notice of the change must be posted 48 hours in advance. If the location of the meeting is changed, the notice must be posted at both the former location and the new location.
2. Post the agenda at the entrance to the meeting location.
3. Record minutes at the meeting, using the sample form provided, and send the minutes to the Commission within a reasonable period of time.

*** This agenda should be reproduced to post
at the meeting location entrance.*

**Agenda for _____ County
Alcoholic Beverage Board**

Meeting Location _____

Meeting Date _____

1. Call to Order and Noting of Quorum
2. Remonstrance Identification and Sign-In
3. Administration of Oath
4. Consideration of Applications
 - a. Renewals with No Remonstrance
 - b. Applications Requiring Discussions
 - i. New/Renewal Applications with Remonstrance
 - ii. Change of Location or Ownership
 - iii. Renewal After Violation
 - iv. Applications Granted Under Advisement
5. Adjournment

Please note the following procedures.

Renewal:

Allow remonstrators to proceed first. If remonstrators appear to remonstrate against a permit scheduled for renewal without a hearing, the permittee shall be notified to appear at the next meeting. The permit hearing should be continued until the next meeting at which a hearing will be conducted on the permit application.

New Permit:

Allow applicant to proceed first. Remonstrators then present testimony and evidence. The applicant may then present evidence to rebut the remonstrance. If the applicant wants a continuance to hire an attorney or prepare a response, he or she should be given at least one continuance.

Continuances:

A total of only three continuances should be allowed per permit application. Pursuant to Indiana law, only a Designated Member may grant continuances. Each continuance may not exceed thirty days. If a fourth continuance is being requested by any party, it should only be approved by the Executive Secretary or the Commission.

Recommended Local Board Meetings

The Alcoholic Beverage Board of _____ County, Indiana

1. Call the Meeting to Order.
2. Let the record reflect this is a meeting of the _____ County Alcoholic Beverage Board, this ____ day of _____, at ____ am/pm. The members of the Local Board are _____, _____, _____, and _____ of the Indiana State Excise Police.
3. Are there any persons here who wish to voice opposition to any permits on the agenda today? If so, will you please stand, state the permit you wish to remonstrate against, and remain standing.
4. Will all persons in attendance seeking a new permit, requesting a change of location or ownership or seeking a renewal after violation, stand with the remonstrators and please raise your right hand:

"Do each of you solemnly swear or affirm under the penalties of perjury, that the answers that you have given on your application, or any testimony you may give to any questions asked by this board, to be the truth, the whole truth, and nothing but the truth?"
5. Ask the Local Board for a motion to approve renewals with no remonstrance.
6. New permits, changes of location or ownership, or renewals after occurrence of violation or with remonstrators are presented now.

State the permit number and type, the name of applicant, the name of business, the location and purpose of business.

Ask the applicant or applicant's representative to stand and state his or her name, and answer the questions on the back of the application.

Ask if there are any persons present remonstrating against the permit, and if they have signed the remonstrance sheet.

Without a signed remonstrator sheet, the Commission will automatically assume that there were no remonstrators present. If it is determined that remonstrators were present, the case may be remanded to the local board for a second hearing.

Ask remonstrators who wish to speak against the permit to stand; verify that each person has taken the oath, or administer it again.

Speakers must position themselves near the tape recorder. Each person must give his or her name and address or telephone number. After each statement, the applicant will have the right to ask questions about what has been said.

7. The Local Board must be mindful of the due process of law. The applicant or permittee shall have the right to question witnesses making complaints against him or her. Such witnesses shall be under oath. After the remonstrators speak, the applicant or permittee shall be given the right to offer evidence in rebuttal to any complaint, and the right to present any relevant evidence in support of the applicant or permittee's position regarding issuance or renewal of the permit.



WITHDRAWAL OF APPLICATION
State Form 44186 (8-90)

Date (month, day, year)
ABC file number

Type of permit for which applied	
Name of applicant	
Address of applicant	City or town
	County
This is to certify that I, _____ wish to withdraw my application for an Alcoholic Beverage Permit at _____ which is now on file at the Indiana Alcoholic Beverage Commission office at Indianapolis, Indiana.	
Signature of applicant X	Date signed (month, day, year)

NOTARY CERTIFICATE		
STATE OF _____ } SS:		
COUNTY OF _____ }		
I, _____, first being duly sworn on oath say that I am the <small>Name of applicant</small> above named, that I have personally prepared the foregoing application, and that the same is true to the best of my knowledge and belief.		
Signature of applicant	Signature of Notary Public	
Printed or typed name of applicant	Printed or typed name of Notary Public	
Date subscribed and sworn To (Notary Public)	County of residence	Date commission expires



INDIANA STATE EXCISE POLICE

302 West Washington Street, Room E112
Indianapolis, IN 46204



Date: _____

Permit # _____

The _____ County Local Board is requesting your appearance at their next hearing, to be held on _____ at _____ for the following reason (s):

_____ Failed to appear at the originally scheduled date for hearing of Transfer of Owner, Transfer of Location, Transfer of Stock, New Permit

_____ Failed to appear for the hearing of the renewal of your permit when required, due to violations within the time period from last renewal of your permit.

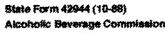
_____ Person or persons remonstrating against the issuance or renewal of your permit.

_____ Other; _____

This is the only notice you will receive. If you have any questions, please call _____ at (317) 232-2452.

Sincerely,

Meeting Location:



- Officer**



SCHEDULE OF LOCAL BOARD (LB)
State Form 36797 (R / 10-86)

Report of _____ County Local Board

Hearing held _____ 20 _____

APPLICANT INFORMATION	
Permit Number	Date of Expiration
Name of Applicant	
Address (Street and number)	
City, state and ZIP code	

ALCOHOLIC BEVERAGE COMMISSION

FOR ATC USE ONLY

APPROVED	By	Date
Do not approve unless vote is for approval by 4 to 0, 3 to 1, 3 to 0 or 2 to 1.		

If application is for a new permit, state type of permit applied for.

Number _____ Description _____

If application is for a new permit, state the Alcoholic Beverage Commission file number.

Number _____

RECOMMENDATION STATEMENT

We the members of the Local Alcoholic Beverage Board for the above county, reporting on the application of the above applicant for the type permit listed above do hereby declare and represent that a duly constituted hearing was held by this Board pursuant to proper notice.

We further declare and represent that the applicant and / or his representative appeared before the Board if required and a public investigation concerning applicant's general moral character, his fitness, his qualifications generally, and his place or premises wherein he proposes to conduct the business for which application has been made, was had in the form of sworn oral testimony, affidavits, duly certified documents, and other sources of information.

We further declare and represent that we have examined the application of the above applicant and believe it to be correct and proper, unless noted otherwise in the general remarks section below.

We further declare and represent that to the best of our knowledge all the information on both sides of this schedule form is correct and a part of the record of this hearing.

We further declare and represent that our signatures as set forth below constitute the signing of this investigation schedule, whether they appear in the section "recommend approved" or "recommend disapproved."

We further declare and represent that we recommend to the Alcoholic Beverage Commission of Indiana the approval, or the rejection, of the granting of the permit for the above application according to our signatures as placed below in the columns marked "approved" or "rejected."

RECOMMENDED APPROVED By Local Board For Consideration By Alcoholic Beverage Commission	RECOMMENDED DISAPPROVED By Local Board For Consideration By Alcoholic Beverage Commission
Signature of Local Board Member and President	Signature of Local Board Member and President
Signature of Local Board Member	Signature of Local Board Member
Signature of Local Board Member	Signature of Local Board Member
Signature of Local Board Member and Secretary	Signature of Local Board Member and Secretary
<input type="checkbox"/> To be held in Escrow for the following reasons:	Disapproved by Local Board for the following reasons:
<input type="checkbox"/> Need final inspection	
<input type="checkbox"/> Need Board of Health approval	
<input type="checkbox"/> Fire	
<input type="checkbox"/> Other (please specify)	
General Remarks:	

CONTINUED ON REVERSE SIDE



REPORT OF MINUTES
State Form 47410 (12-95)

Name of County Alcohol Beverage Board		Date (month, day, year)
Location		
BOARD MEMBERS		PRESENT / ABSENT
		<input type="checkbox"/> Present <input type="checkbox"/> Absent
		<input type="checkbox"/> Present <input type="checkbox"/> Absent
		<input type="checkbox"/> Present <input type="checkbox"/> Absent
		<input type="checkbox"/> Present <input type="checkbox"/> Absent
		<input type="checkbox"/> Present <input type="checkbox"/> Absent
		<input type="checkbox"/> Present <input type="checkbox"/> Absent
<p>1. Call to Order by the President.</p> <p>2. Request Remonstrators to sign remonstrance form (<i>separate sheet for each permit</i>). Without signed remonstrator form, cases will be remanded back to local board for a second hearing.</p> <p>3. Administration of oath to all intending to speak during the meeting.</p> <p>4. Consideration of applications (<i>attached copy of permits advertised for meeting date</i>)</p> <p style="margin-left: 20px;">A. Renewals with no remonstrance (<i>so noted on attached listing</i>). Ask for a motion to approve; vote tally record _____</p> <p style="margin-left: 20px;">B. Applications which need discussion (<i>to be recorded on separate audio tapes, properly labeled</i>). May include:</p> <p style="margin-left: 40px;">New or renewal applications with remonstrance.</p> <p style="margin-left: 40px;">Change of location or ownership.</p> <p style="margin-left: 40px;">Renewal after violation.</p> <p style="margin-left: 40px;">Applications granted previous continuance or under advisement.</p> <p>Applications so recorded: (<i>list additional on back</i>)</p>		
PERMIT NUMBER	NAME (DBA)	VOTE TALLY RECORD
<p>5. Applications granted continuance today, so recorded:</p>		
PERMIT NUMBER	NAME (DBA)	NEW DATE
Signature of Local Board President		

State Excise Police District Offices



District #1

1712 East U.S. Hwy. 20
Evergreen Park Business Center
Michigan City, IN 46360

(219) 872-6041

District #2

1353 South Governor's Drive
Columbia City, IN 46275

(260) 244-4285

District #3

30 Professional Court, Suite 1
Lafayette, IN 47905

(765) 447-7066

District #4

651 South Frontage Road
Seymour, IN 47274

(821) 523-8314

District #5

1621 Willow Street
Vincennes, IN 47591

(812) 882-1292

District #6

6979 Corporate Circle
Indianapolis, IN 46278

(317) 293-2437

Headquarters Offices

Indiana Government Center - South
302 W. Washington Street, Room E 112
Indianapolis, IN 46204

Superintendent Alex Huskey
Office of Professional Standards
Media & Program Information

(317) 232-2452

(317) 232-4826

(317) 232-2469



State of Indiana Indiana State Excise Police



INDIANA ENFORCEMENT OF ALCOHOLIC BEVERAGE LAWS

The Indiana State Excise Police is charged with the primary responsibility for policing the alcoholic beverage and tobacco industry in the state. The State Excise Police enforce the laws which regulate permit holders (those who are legally permitted to sell and serve alcoholic beverages) and non-permittees (those not legally entitled to sell alcoholic beverages and tobacco certificate holders).

One of the duties of the State Excise officers is representing the state on local Alcoholic Beverage Boards in each county. These meetings allow residents of the county to voice their concerns and suggestions about renewals or issuance of permits. Officers also investigate each permit location before a permit is renewed to determine whether the permittee has met legal standards and is qualified to continue selling and servicing alcoholic beverages.

You will frequently hear about the Excise Police offering statewide public information programs targeted to increase public and industry awareness about alcohol.

The State Excise Police also work closely with the alcoholic beverage industry, conducting training sessions to educate servers of alcohol.

These public information programs are just some of the positive efforts of the State Excise Police to work cooperatively with the alcoholic beverage industry and the public as an alternative to enforcement. Officers are available to make presentations to all interested schools and organizations at no cost.

For more information, please contact the nearest Indian State Excise Police district office, which can be located on the map in this booklet.

The Indiana State Excise Police remind you...
Education is the alternative to enforcement

NOTES

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

NOTES

[illegible]





Indiana Alcoholic Beverage Commission

302 W. Washington Street, Room E 112
Indianapolis, IN 46204

Phone: (317) 232-2430

Fax: (317) 233-6114